

TITLE 34

HUMAN SERVICES; JUVENILE CODE; CORRECTIONS

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Chapter 409

2003 EDITION

Department of Human Services

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**DEPARTMENT OF HUMAN SERVICES
(Generally)**

409.010 Department of Human Services; duties; personnel. (1) The Department of Human Services is created.

(2) The department is responsible for the delivery and administration of programs and services relating to:

(a) Children and families, including but not limited to child protective services, foster care, residential care for children and adoption services;

(b) Elderly persons and disabled persons, including but not limited to social, health and protective services and promotion of hiring of otherwise qualified persons who are certifiably disabled;

(c) Persons who, as a result of the person's or the person's family's economic, social or health condition, require financial assistance, institutional care, rehabilitation or other social and health services;

(d) Health and health-related affairs, including but not limited to medical assistance and services, public health services, migrant health services, licensing of health facilities and coordination of the activities of professional and occupational licensing boards;

(e) Mental health and developmental disabilities;

(f) Vocational rehabilitation for individuals with disabilities;

(g) Alcohol abuse, drug abuse, addiction and chemical dependency problems;

(h) Licensing and regulation of individuals, facilities and programs providing health and human services, in accordance with the provisions of state and federal law; and

(i) Any other health and human service programs and functions delegated to the department by or in accordance with the provisions of state and federal law.

(3) The department shall be the recipient of all federal funds paid or to be paid to the state to enable the state to provide the programs and services assigned to the department.

(4)(a) All personnel of the department, including those engaged in the administration of vocational rehabilitation programs, public assistance programs and services to families or children in compliance with the federal Social Security laws, shall be subject to the merit system prescribed in the State Personnel Relations Law. For purposes of the State Personnel Relations Law, the department is the appointing authority of all employees in the department.

(b) The Director of Human Services, in conformity with the State Personnel Re-

lations Law, may appoint and employ such personnel as may be necessary for the department, and may appoint and fix the compensation of all assistants and employees of the department.

(c) The director may authorize reimbursement of such expenses as are approved by the department and incurred by assistants and employees of the department, and by volunteers or other persons not employed by the department, in carrying out duties assigned or authorized by the department.

(5) The director may designate employees to be custodians of records within any of the organizational units of the department, and persons so designated shall have the duties and powers of custodians of public records as prescribed by law. Such designation shall be in writing and notice thereof shall be filed in the office of the Secretary of State, with the director and in the organizational unit to which the authorization applies. [Formerly 184.750; 1993 c.344 §1; 1999 c.421 §1; 2001 c.900 §5]

409.015 [1993 c.674 §11; repealed by 1997 c.753 §20]

409.020 [Formerly 184.785; 1993 c.798 §48; repealed by 1997 c.704 §10a (409.021 enacted in lieu of 409.020)]

409.021 [1997 c.704 §10b (enacted in lieu of 409.020); 1999 c.1095 §2; repealed by 2003 c.73 §60]

409.030 [1991 c.697 §2; repealed by 1993 c.344 §49]

409.040 Federal law supersedes state law. (1) To the extent that there is any conflict between chapter 319, Oregon Laws 1971, and any federal law referred to or to be administered under chapter 319, Oregon Laws 1971, the federal law in effect on June 8, 1971, is controlling.

(2) In all cases where federally granted funds are involved, the federal laws, rules and regulations applicable thereto shall govern notwithstanding any provision to the contrary in ORS 409.010, 409.060, 409.070, 409.093 to 409.160, 411.060 and this subsection. [Formerly 184.780]

Note: Legislative Counsel has substituted "chapter 319, Oregon Laws 1971," for the words "this Act" in section 9, chapter 319, Oregon Laws 1971, compiled as 409.040 (formerly 184.780). Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 18 of ORS.

409.050 Rules. (1) Pursuant to ORS chapter 183, the director may adopt such administrative rules as the director considers necessary to carry out the functions of the department.

(2) Notwithstanding any other provision of law, the director by order may delegate authority under subsection (1) of this section to such extent as the director considers proper to assistant directors of the department. [Formerly 184.787]

409.055 Copies of rules to be available in local offices; availability for inspection.

The Department of Human Services shall maintain in each of its local offices copies of its rules and regulations that the department is required to file with the Secretary of State. Copies of the rules and regulations shall be available for public use and inspection during regular business hours and shall be compiled and indexed in a manner that will facilitate their use. [2001 c.900 §7]

409.060 Department of Human Services Account. (1) There is established in the General Fund of the State Treasury an account to be known as the Department of Human Services Account. All moneys in this account are appropriated for and shall be used by the Department of Human Services for the respective purposes authorized by law. The moneys in the account and all appropriations for the account are subject to allotment control by the Oregon Department of Administrative Services.

(2) The Department of Human Services shall keep a record of all moneys credited to and deposited in the account. The records shall indicate by separate cumulative accounts the source from which the moneys were derived and the individual activity or program against which each withdrawal is charged.

(3) The unobligated balance in the account on June 30 of each odd-numbered year shall be determined by the department as of September 30 next following, and certified to the Oregon Department of Administrative Services. Unless otherwise provided by law or action of the Emergency Board, the amount certified pursuant to this subsection shall revert to the General Fund and become available for general governmental purposes. [Formerly 184.795; 1999 c.421 §2]

409.070 Department of Human Services Special Checking Account; petty cash fund. (1) There is established a Department of Human Services Special Checking Account in the State Treasury. Upon the written request of the Director of Human Services, the Oregon Department of Administrative Services shall draw payments in favor of the Department of Human Services to be charged against appropriations and other moneys available to the Department of Human Services in the same manner as other claims against the state, as provided in ORS chapter 293. All such payments shall be deposited in the special checking account and may be disbursed by check or other means acceptable to the State Treasurer.

(2) The special checking account may be used for the purpose of paying the adminis-

trative expenses of programs and services assigned to the Department of Human Services by law, including the payment of expenses to be reimbursed by the federal government.

(3) In addition to the authority provided in ORS 293.180, the Department of Human Services may establish petty cash funds out of the special checking account or any account established in the State Treasury for the department. Small cash disbursements to pay the expenses of the department may be made from a petty cash fund. Periodically, the department shall request reimbursement for disbursements made from a petty cash fund. Upon receipt of a reimbursement payment from an appropriate account, the department shall use the payment to reimburse the petty cash fund. [Formerly 184.800; 1999 c.421 §3; 1999 c.829 §2; 2001 c.900 §62]

409.075 Volunteer Emergency Services Fund. (1) There is established a Volunteer Emergency Services Fund in the State Treasury. The amount of the fund shall not exceed the aggregate sum of \$10,000.

(2) The fund may be used to pay for purchases, by check or other acceptable means, necessary to assist clients of the Department of Human Services with emergency circumstances that qualify such clients for assistance from the fund.

(3) Claims for reimbursement of moneys paid from the Volunteer Emergency Services Fund shall be submitted to the Department of Human Services and the Oregon Department of Administrative Services for approval. When the claims have been approved, the Oregon Department of Administrative Services shall draw a warrant or make an electronic transfer in favor of the Department of Human Services to be charged to the appropriate fund or account to reimburse the Volunteer Emergency Services Fund. [1999 c.829 §3]

409.080 Combination or elimination of accounts. Notwithstanding any other law, the Department of Human Services may, with the approval of the Oregon Department of Administrative Services and the State Treasurer, combine or eliminate any accounts that are established in statute within the authority of the Department of Human Services when the Department of Human Services determines that economy and efficiency in operations can be obtained and that the combination or elimination of accounts does not substantially alter the intent of the authorizing statutes. When accounts are combined, the Department of Human Services retains the authority granted by the statutes establishing the accounts. [1999 c.829 §4; 2001 c.900 §63]

409.093 Policy on incorporation of family support policies. It shall be the policy of the Department of Human Services to incorporate the family support policies under ORS 417.340 to 417.348 into staff training and information given to the general public. [1995 c.486 §2; 2001 c.900 §244]

409.096 Plan for incorporating family support consultants; development of protocol and training. (1) The Department of Human Services shall develop a plan for incorporating family support consultants into a percentage of cases managed within the department. The consultants shall work directly with families to develop support in a manner consistent with the family support policies under ORS 417.340 to 417.348 and 417.349.

(2) The department shall consult with the Family Support Advisory Council established under ORS 417.346, to develop protocol and training consistent with the family support policies under ORS 417.340 to 417.348 and 417.349. [1995 c.486 §3; 2001 c.900 §245]

(Director, Deputy, Assistant Directors)

409.100 Director; appointment; confirmation; salary and expenses. (1) The Department of Human Services shall be under the supervision and control of the Director of Human Services, who is responsible for providing for programs for the delivery to the public of the services assigned to the department by ORS 409.010 or otherwise, and for undertaking long-range planning necessary for the effective and efficient delivery of these services.

(2) The Governor shall appoint the director. The director may be removed at any time at the pleasure of the Governor. The appointment of the director is subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(3) The director shall receive such salary as may be provided by law or, if not so provided, as may be fixed by the Governor, and shall be reimbursed for all expenses actually and necessarily incurred by the director in the performance of official duties. [Formerly 184.755; 1999 c.421 §§4,5]

409.110 Authority of director; grants.

(1) The Director of Human Services, consistent with any federal requirements and with the prior consent of the Governor:

(a) May cause the organizational units within the Department of Human Services to make joint use of the personnel, resources, information and facilities available within the department;

(b) May combine or transfer components of organizational units within the department; and

(c) May organize and reorganize the department in the manner the director considers necessary to properly conduct the work of the department consistent with federal requirements and after consultation with parties affected by such change, including but not limited to service providers, advisory committees and county governments.

(2) The director may make financial grants to local units of government, non-profit organizations and individuals from funds appropriated by the Legislative Assembly to carry out the department's responsibilities. [Formerly 184.770; 1999 c.421 §6; 2001 c.900 §64]

409.120 Delegation of authority of director.

(1) The Director of Human Services may delegate to any of the officers and employees of the department the exercise or discharge in the director's name of any power, duty or function of whatever character vested in or imposed upon the director by law. However, all such delegations of a continuing nature involving provision for services performed by the department may be exercised by an officer or employee of the department only when specifically designated in writing by the director to do so.

(2) The official act of any person acting in the director's name and by the director's authority pursuant to subsection (1) of this section shall be considered an official act of the director. [Formerly 184.773]

409.130 Deputy director; assistant directors.

(1) The Director of Human Services may appoint a deputy director, whose appointment is subject to approval by the Governor and who shall serve at the pleasure of the director. The deputy director shall have full authority to act for the director, subject to directions of the director. The appointment of the deputy director shall be by written order, filed with the Secretary of State.

(2) The director may appoint assistant directors as necessary to carry out the responsibilities of the Department of Human Services. The appointment of each assistant director is subject to approval by the Governor. An assistant director serves at the pleasure of the director. [Formerly 184.760; 1999 c.421 §7; 2001 c.900 §65]

409.140 Assistant director as appointing authority; assignment of employees by director.

(1) For purposes of the State Personnel Relations Law, each assistant director appointed under ORS 409.130, and any other officer specifically designated by law, is considered to be the appointing authority with respect to officers and employees under

the supervision of the assistant director or other officer, and ORS 240.400 applies to each such appointing authority.

(2) Notwithstanding subsection (1) of this section, the Director of Human Services at any time may assign an employee from one position to another position in the same class or rank within the department. Upon making such an assignment or transfer, the director forthwith shall give written notice of the action to the Administrator of the Personnel Division. ORS 240.400 applies to the power vested in the director under this subsection. [Formerly 184.767; 2003 c.14 §172]

409.150 Assistant directors in unclassified service; other employees; salary; expenses. Assistant directors appointed under ORS 409.130 shall be in the unclassified service of the state and shall receive such salaries as may be provided by law. With the approval of the Director of Human Services, each assistant director may appoint deputies and secretarial staff as necessary to conduct the work of the department who shall be in the unclassified service and receive such salaries as may be provided by law. In addition to their salaries, they shall, subject to the limitations otherwise provided by law, be reimbursed for all expenses actually and necessarily incurred in the performance of official duties. [Formerly 184.765; 2001 c.900 §66]

409.160 Information from personnel within department. (1) The Director of Human Services shall require from the personnel within the department such information, reports and documentation, as the director, in the discretion of the director, determines will be necessary to enable the director to:

(a) Execute responsibilities pursuant to law.

(b) Develop and report to the Governor from time to time on legislative, budgetary and administrative programs to accomplish comprehensive, long-range, coordinated planning and policy formulation in the matters of public interest related to the department.

(c) File with the Oregon Department of Administrative Services, for purposes of ORS 291.208, a budget report for the department.

(2) Where such information, reports or documentation is confidential in the hands of departmental personnel, it shall be confidential in the hands of the director. [Formerly 184.775; 2001 c.900 §67]

409.180 Consolidation of internal audit units. The Director of Human Services may consolidate the internal audits units within the Department of Human Services into an office of audits within the director's office, in order to achieve a higher level of independ-

ence and economy of management. [1991 c.321 §1]

Note: Sections 1 to 3, chapter 570, Oregon Laws 2003, provide:

Sec. 1. (1) On or before January 1, 2004, the Department of Human Services shall establish a pilot program in at least one service delivery area. The purpose of the program is to provide an opportunity for human services clients to access faith-based or community organizations taking part in the effort to assist clients who are affiliated with those organizations.

(2) The department shall develop procedures and training to assist staff in identifying clients who have an existing affiliation with a faith-based or community organization and who have an interest in working with the organization to supplement the services provided by the department.

(3)(a) A client is not required to:

(A) Participate with a faith-based or community organization; or

(B) Give any information about the client's affiliation with a faith-based or community organization.

(b) A client may withdraw from or terminate the client's participation with a faith-based or community organization at any time.

(4) The client's affiliation with a faith-based or community organization may not adversely impact the client's eligibility for department services. The department may not require a client to participate in the activities or services of a faith-based or community organization identified under subsection (2) of this section.

(5) In collaboration with faith-based and community organizations, the department shall establish procedures for:

(a) Assisting an interested client in contacting a faith-based or community organization with whom the client is affiliated and communicating the needs of the client to the organization.

(b) Providing notice to a client of the client's rights under this section.

(6) The department may not initiate any volunteer activities of faith-based or community organizations to assist human services clients as described in subsection (5)(a) of this section.

(7) The department may terminate or withdraw from only the relationship created under the pilot program with a faith-based or community organization when:

(a) Requested by a client after the faith-based or community organization has been given reasonable opportunity to respond to concerns or allegations expressed by the client; or

(b) The activities or services provided by the faith-based or community organization impede the ability of the department to effectively provide services.

(8) This section does not create a new entitlement to services. [2003 c.570 §1]

Sec. 2. (1) The Department of Human Services shall conduct the pilot program established pursuant to section 1 of this 2003 Act within the department's legislatively approved budget. The department may accept contributions of funds and assistance consistent with the purposes of the pilot program.

(2) The department shall report to the Seventy-third Legislative Assembly on the pilot program established pursuant to section 1 of this 2003 Act. [2003 c.570 §2]

Sec. 3. Sections 1 and 2 of this 2003 Act are repealed on January 2, 2006. [2003 c.570 §3]

(Child Welfare Services)

409.185 Standards and procedures for child protective services. (1) The Director of Human Services shall oversee the development of standards and procedures for assessment, investigation and enforcement of child protective services.

(2)(a) The Department of Human Services shall take action to implement the provision of child protective services as outlined in ORS 417.705 to 417.797 and 419A.170 and based on the recommendations in the 1992 "Oregon Child Protective Services Performance Study" published by the University of Southern Maine.

(b) In all substantiated cases of child abuse and neglect, the role of the department is to complete a comprehensive family assessment of risk of abuse or neglect, or both, assess service needs and provide immediate protective services as necessary.

(c) The department shall provide remedial services needed to ensure the safety of the child.

(d) In all cases of abuse and neglect when a criminal investigation occurs, the role of law enforcement agencies is to provide a legally sound, child sensitive investigation of whether abuse or neglect or both have occurred and to gather other evidence and perform other responsibilities in accordance with interagency agreements.

(e) The department and law enforcement agencies shall conduct the investigation and assessment concurrently, based upon the protocols and procedures of the multidisciplinary team in each jurisdiction.

(f) When the department and law enforcement agencies conduct a joint investigation and assessment, the activities of the department and agencies are to be clearly differentiated by the protocols of the multidisciplinary team.

(g) Nothing in this subsection is intended to be inconsistent with ORS 418.747, 418.748 and 418.749 and ORS chapter 419B.

(3) Upon receipt of a recommendation of the Children's Advocate under ORS 417.815 (2)(e), the department shall implement the recommendation or give the Children's Advocate written notice of an intent not to implement the recommendation. [1993 c.676 §11; 1995 c.79 §397; 1997 c.130 §4; 1997 c.249 §126; 2001 c.900 §68; 2003 c.591 §7]

409.190 [1993 c.676 §28(1); 1997 c.130 §5; repealed by 2001 c.900 §261]

409.192 Policy on internal review of department decisions. It is the policy of the State of Oregon to ensure the integrity of the child welfare system. To this end it is necessary to provide for a process to allow for appropriate internal review of decisions

made by the Department of Human Services. The state therefore requires that:

(1) Citizens shall be guaranteed the right to review of the actions and conduct of the department.

(2) Citizens shall be provided with a single place to file complaints concerning the actions and conduct of the department and shall be entitled to a response to the complaint within a reasonable period of time.

(3) Citizens shall not be subjected to reprisal for complaining of an action or conduct of the department. [1997 c.873 §28]

409.194 Establishment of review process; rules. (1) The Department of Human Services shall adopt rules establishing a review process to carry out the policy expressed in ORS 409.192.

(2) If the actions and conduct of the department are being addressed in a judicial or administrative proceeding, the review required by subsection (1) of this section may not be commenced or shall be stayed pending resolution of the judicial or administrative proceeding. [1997 c.873 §29]

409.210 [Formerly 184.805; repealed by 1993 c.676 §53]

409.220 Services relating to prevention, control and treatment of incest and sexual abuse; fees. (1) The Department of Human Services may provide services related to the prevention, control and treatment of incest and sexual abuse. Those services include, but are not limited to, consultation, counseling, therapy and treatment programs for children who are the victims of incest and sex offenses, their families and the perpetrators of the incest or sex offense.

(2) When the services described in subsection (1) of this section are provided, the department may charge the perpetrator a fee not to exceed the cost of the services. The fee shall vary according to the service provided, and shall be determined and applied through rules adopted by the department.

(3) The amount of fees collected under subsection (2) of this section are continuously appropriated to the department and shall be used to provide the services described in subsection (1) of this section. [Formerly 184.807]

409.225 Confidentiality of child welfare records, files, papers and communications; when disclosure required. (1) In the interest of family privacy and for the protection of children, families and other recipients of services, the Department of Human Services shall not disclose or use the contents of any child welfare records, files, papers or communications that contain any information about an individual child, family or other recipient of services for purposes

other than those directly connected with the administration of child welfare laws or unless required or authorized by ORS 419A.255 or 419B.035. The records, files, papers and communications are confidential and are not available for public inspection. General information, policy statements, statistical reports or similar compilations of data are not confidential unless such information is identified with an individual child, family or other recipient of services or protected by other provision of law.

(2) Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the department shall disclose child welfare records:

(a) About a recipient of services, to the recipient if the recipient is 18 years of age or older or is legally emancipated, unless prohibited by court order;

(b) Regarding a specific individual if the individual gives written authorization to release confidential information;

(c) Concerning a child receiving services on a voluntary basis, to the child's parent or legal guardian;

(d) To the juvenile court in proceedings regarding the child; and

(e) Concerning a child who is or has been in the custody of the department, to the child's parent or legal guardian except:

(A) When the child objects; or

(B) If disclosure would be contrary to the best interests of any child or could be harmful to the person caring for the child.

(3) Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the department shall disclose child welfare records, if in the best interests of the child, to:

(a) Treatment providers, foster parents, adoptive parents, school officials or other persons providing services to the child or family to the extent that such disclosure is necessary to provide services to the child or family; or

(b) A person designated as a member of a sensitive review committee convened by the Director of Human Services when the purpose of the committee is to determine whether the department acted appropriately and to make recommendations to the department regarding policy and practice.

(4) Any record disclosed under subsection (1), (2) or (3) of this section shall be kept confidential by the person or entity to whom the record is disclosed and shall be used only for the purpose for which disclosure was made.

(5) Unless exempt from disclosure under ORS chapter 192, when an adult who is the subject of information made confidential by subsection (1) of this section publicly reveals or causes to be revealed any significant part of the confidential matter or information, the protections afforded by subsection (1) of this section are presumed voluntarily waived and confidential information about the person making or causing the public disclosure, not already disclosed but related to the information made public, may be disclosed if disclosure is in the best interests of the child or necessary to the administration of the child welfare laws.

(6) Notwithstanding subsection (1) of this section, unless exempt from disclosure under ORS chapter 192, the department shall disclose information related to the department's activities and responsibilities in a case where child abuse or neglect has resulted in a child fatality or near fatality or where an adult has been charged with a crime related to child abuse or neglect.

(7) Notwithstanding subsections (2), (3), (5) and (6) of this section, ORS 192.501 (3) shall apply to investigatory information compiled for criminal law purposes that may be in the possession of the department.

(8) As used in this section, "adult" means a person who is 18 years of age or older. [1997 c.415 §1; 2001 c.900 §69]

409.230 Disclosure of information in department reports and other materials; immunities. (1) Information contained in Department of Human Services reports and other materials relating to a child's history and prognosis that, in the professional judgment of the person providing the information for the reports or other materials, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person or entity who is in danger from the child.

(2) An agency or a person who discloses information under subsection (1) of this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure. The disclosure of information under this section does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible. [1991 c.666 §2; 2001 c.900 §70]

409.240 Payment of expenses. Warrants shall be drawn by the Oregon Department of Administrative Services in favor of the Department of Human Services for the aggregate amounts of the Department of Human Services' expenses. The Department of Human Services shall deposit all such warrants in the State Treasury in a checking account in reimbursement of those expenses. The De-

partment of Human Services may draw its checks on the State Treasury in favor of the persons, firms, corporations, associations or counties entitled thereto under such rules as it shall adopt so as to include in single combined payments for specified periods all moneys allotted to particular payees from various sources for the period. [Formerly 184.820]

409.250 Revolving fund. (1) On written request of the Department of Human Services, the Oregon Department of Administrative Services shall draw warrants on amounts appropriated to the Department of Human Services for operating expenses for use by the Department of Human Services as a revolving fund. The revolving fund shall not exceed the aggregate sum of \$100,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the Department of Human Services may draw checks.

(2) The revolving fund may be used by the Department of Human Services to pay for travel expenses for employees of the department and for any consultants or advisers for whom payment of travel expenses is authorized by law, or advances therefor, or for purchases required from time to time or for receipt or disbursement of federal funds available under federal law.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the Department of Human Services and by the Oregon Department of Administrative Services. When such claims have been approved, a warrant covering them shall be drawn in favor of the Department of Human Services and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund. [Formerly 184.810]

409.260 Services to Children and Families Account. (1) There hereby is established in the General Fund of the State Treasury an account to be known as the Services to Children and Families Account. All moneys in the Services to Children and Families Account are appropriated for and shall be used by the Department of Human Services for the respective purposes authorized by law. The moneys in the Services to Children and Families Account shall be subject to allotment made under ORS 291.232 to 291.260 by the Oregon Department of Administrative Services.

(2) The Department of Human Services shall keep a record of all moneys credited to and deposited in the Services to Children and Families Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the

individual activity or program against which each withdrawal is charged.

(3) In addition to sources provided under other laws, the sources of revenues in the Services to Children and Families Account may include recoveries of the cost of care provided to clients, amounts paid to the Department of Human Services by other organizations and state agencies in support of the department's programs and activities and other moneys received by the department that are incidental to its operations. [Formerly 184.815; 1997 c.130 §6]

(Sexual Assault Crisis Centers and Crisis Lines)

409.270 Definitions for ORS 409.273 to 409.285. As used in ORS 409.273 to 409.285:

(1) "Crisis line" means an emergency telephone service staffed by persons who are trained to provide emergency peer counseling, information, referral and advocacy to victims of sexual offenses and their families.

(2) "Director" means the Director of Human Services. [1999 c.943 §2; 2001 c.900 §71]

409.273 Funding of sexual assault crisis centers and crisis lines; rulemaking.

(1) The Director of Human Services may make grants to and enter into contracts with private nonprofit organizations that provide intervention and support services to victims of sexual offenses and their families. Grants or contracts under this subsection may be:

(a) For the funding of sexual assault crisis centers; and

(b) For the funding of crisis lines providing services to victims of sexual offenses and their families.

(2) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990:

(a) The director may by rule provide that the locations of premises utilized for sexual assault crisis centers shall be kept confidential.

(b) All information maintained by the sexual assault crisis center or crisis line relating to clients is confidential. Except for the names of clients, necessary information may be disclosed to the director. [1999 c.943 §3]

409.276 Standards for sexual assault crisis centers. The Director of Human Services shall establish minimum standards for sexual assault crisis centers receiving grants or other financial assistance under ORS 409.273. [1999 c.943 §4]

409.279 Application for funds; notification of final action on application. (1) A private nonprofit organization operating a sexual assault crisis center or crisis line may

apply to the Director of Human Services for a grant under ORS 409.273. The organization must submit to the director, at the time of application:

- (a) A statement of services provided;
- (b) Proof of maintenance of accurate and complete financial records;
- (c) Clearly defined written policies and procedures; and
- (d) A list of members of the governing board.

(2) The director shall approve or reject applications within 60 days after receipt. The director shall mail written notification to the applicant no later than five working days following final action taken on the application.

(3) The director shall consider the geographic area of the state from which an application is submitted to the end that all areas of the state develop programs to deal with the victims of sexual offenses. [1999 c.943 §5]

409.282 Services provided by sexual assault crisis centers and crisis lines. Services provided by sexual assault crisis centers and crisis lines receiving grants or other financial assistance under ORS 409.273 shall be made accessible and available to all persons who reside in the area served who may need the services. If a sexual assault crisis center or crisis line receiving funds under ORS 409.273 is unable to provide necessary services to a client, it shall refer the client to alternative community resources. [1999 c.943 §6]

409.285 Sexual Assault Victims Fund. (1) There is established the Sexual Assault Victims Fund in the Services to Children and Families Account of the General Fund established under ORS 409.260.

(2) All moneys credited to the Sexual Assault Victims Fund are continuously appropriated for the purposes of ORS 409.273 to be expended by the Director of Human Services as provided in ORS 409.273. However, the director shall expend not more than five percent of such moneys for administrative costs of the Department of Human Services incurred under ORS 409.273. [1999 c.943 §7]

HEALTH-RELATED PROFESSIONAL LICENSING BOARDS

409.310 Policy regarding health-related professional licensing boards. It is the intention of the Legislative Assembly to provide for the more effective coordination of

the administrative functions of boards charged with responsibility for protecting the public through the licensing and regulating of health-related professions practiced in this state. Further, it is the intention of the Legislative Assembly to retain responsibility and authority in the professional licensing boards, members of which are qualified by education, training and experience to make the necessary judgments, for decisions on qualifications, standards of practice, licensing, enforcement, discipline and other discretionary functions relating to professional activities. The professional licensing boards shall have authority to employ such personnel as they consider necessary to carry out their respective functions and shall maintain full budgetary control over the boards' expenditures and their recommendations for legislation including but not limited to appropriations. Expenditures are subject to the allotment system under ORS 291.232 to 291.260 and rules adopted thereunder. Budgets shall be prepared pursuant to ORS 291.201 to 291.226 and rules adopted thereunder. [Formerly 184.830; 2001 c.900 §72]

409.320 Functions of director. The Director of Human Services shall:

(1) Require each licensing board in the Department of Human Services to maintain a register of the names and current addresses of all persons holding valid licenses, certificates of registration or other evidence of authority required to practice the occupation or profession, or operate the facility within the jurisdiction of such board and periodically, as the director may require, to file a copy of the register at the office of the department. Any board that is authorized or required to distribute a register described in this section may collect a fee to cover the costs of publication, such fee to be handled as other receipts of the board are handled.

(2) In consultation with the licensing boards, designate a qualified person in the department as coordinator for the accounting and other processes of the licensing boards who shall be responsible for providing such services as the licensing boards may request. [Formerly 184.840]

409.330 Director as ex officio member of certain boards. The Director of Human Services, or the designee of the director, shall serve as an ex officio member of all health-related licensing boards in the department, but without the right to vote. However, nothing in this section is intended to authorize the director to intervene in the internal functions and administration of the boards. [Formerly 184.835]

VOLUNTEER PROGRAM

409.360 Authorization to establish volunteer program; volunteer as agent of state; rules. (1) The Director of Human Services is authorized to establish the Department of Human Services Volunteer Program to assist in carrying out the duties of the Department of Human Services.

(2) A volunteer who is performing services pursuant to the Department of Human Services Volunteer Program established under subsection (1) of this section is an agent of the state for purposes of ORS 30.260 to 30.300 and is not an agent of local governments or nonprofit entities that utilize the volunteer's services. However, local government or nonprofit entities are responsible for their own negligent acts or those of their own officers, employees and agents.

(3) The director is authorized to adopt all rules necessary to implement and administer the Department of Human Services Volunteer Program. [1997 c.597 §1; 1999 c.421 §8]

409.365 Department of Human Services Volunteer Program Donated Fund Account. (1) The Department of Human Services Volunteer Program Donated Fund Account is established separate and distinct from the General Fund. Interest earned, if any, shall inure to the benefit of the account. The moneys in the account are appropriated continuously to the Department of Human Services.

(2) The Department of Human Services Volunteer Program shall keep a record of all moneys credited to and deposited in the Department of Human Services Volunteer Program Donated Fund Account. The record shall indicate the source from which the moneys are derived and the activity or program against which each withdrawal is charged.

(3) All private donations or contributions made for the use or benefit of the Department of Human Services Volunteer Program shall be deposited in the Department of Human Services Volunteer Program Donated Fund Account. All funds deposited in that account shall be used for direct program expenditures for the Department of Human Services Volunteer Program and shall not be used for direct or indirect administrative expenditures. [1997 c.597 §2; 1999 c.421 §9]

ALCOHOL AND DRUG ABUSE PROGRAMS

409.410 Alcohol and Drug Abuse Programs; duties of director; rules. (1) The Director of Human Services shall administer all alcohol and drug abuse programs, including but not limited to programs or components of programs described in ORS 430.397

to 430.401, ORS chapter 430, 475.225, 743.557, 743.558 and ORS chapters 801 to 822.

(2) Subject to ORS 417.300 and 417.305, the director shall:

(a) Report to the Legislative Assembly on accomplishments and issues occurring during each biennium, and report on a new biennial plan describing resources, needs and priorities for all alcohol and drug abuse programs.

(b) Develop within the Department of Human Services priorities for alcohol and drug abuse programs and activities.

(c) Monitor the priorities of approved alcohol and drug abuse related programs in all other state agencies.

(d) Conduct statewide and special planning processes which provide for participation from state and local agencies, groups and individuals.

(e) Identify the needs of special populations including minorities, elderly, youth, women and individuals with disabilities.

(f) Subject to ORS chapter 183, adopt such rules as are necessary for the performance of the duties and functions specified by this section, ORS 409.010 and 430.255 to 430.630, or otherwise lawfully delegated.

(3) The director may apply for, receive and administer funds, including federal funds and grants, from sources other than the state. Subject to expenditure limitation set by the Legislative Assembly, funds received under this subsection may be expended by the director:

(a) For the study, prevention or treatment of alcohol and drug abuse and dependence in this state.

(b) To provide training, both within this state and in other states, in the prevention and treatment of alcohol and drug abuse and dependence. [Formerly 184.757; 1997 c.166 §1; 2001 c.900 §73]

409.420 Other duties of director. In addition to the Director of Human Services' other responsibilities, the director shall place special emphasis on all of the following:

(1) Establishing standards for both public and private alcohol and drug abuse prevention, intervention and treatment programs. It is the policy of the Legislative Assembly that all programs providing alcohol and drug abuse related prevention, intervention and treatment services in this state, with public funds, meet the standards established under this subsection.

(2) Providing training for state employees dealing directly with appropriate client groups to insure better recognition and understanding of alcohol and drug abuse problems. Training is also to be directed at

increasing knowledge of appropriate and available resources for assisting clients with alcohol and drug abuse problems.

(3) Conducting continuing long-term evaluation of clients and other recipients of services from all Department of Human Services funded programs, for periods of up to 24 months following completion of service, to assess service effectiveness and enable appropriate corrective actions.

(4) Ensuring financial audits and program reviews of alcohol and drug abuse related programs and services that receive funds, including beer and wine tax revenues distributed under ORS 430.380 and 471.810, from any state agency. [Formerly 184.759; 2003 c.14 §173]

409.425 Inhalant abuse; education resources. (1) For purposes of this section, "inhalant" has the meaning given that term in ORS 167.808.

(2) The Director of Human Services shall develop education resources focusing on the problem of inhalant abuse by minors. The director shall ensure that special emphasis is placed on the education of parents about the risks of inhalant use. The director shall develop tools to help parents talk to their children about the extraordinary risks associated with even a single use of inhalants, as well as those risks that arise from repeated use.

(3) The director shall develop education resources focusing on merchants that sell products that contain inhalants. The director shall encourage merchants that sell products containing inhalants to post signs that inform the public that using inhalants for the purpose of intoxication is illegal and potentially deadly.

(4) The director shall develop and print a standard sign for the purposes of subsection (3) of this section, and shall make the sign available to merchants that elect to display the sign. The sign shall:

(a) Contain the message, "Illegal to inhale fumes for purpose of intoxication. Fumes may cause serious injury or death!"

(b) Be at least five by seven inches in size with lettering that is at least three-eighths of an inch in height.

(c) Contain a graphic depiction of the message to convey the message to a person who cannot read the message. If the depiction includes a picture of a person, the depiction of the person shall be of a minor and shall not reflect any specific race or culture.

(5) The sign developed under subsection (4) of this section shall be in English and in such other languages as may be commonly used in this state. Merchants shall be encouraged to post signs in languages other

than English if English is not the primary language of a significant number of the patrons of the business. [1999 c.229 §2; 2003 c.14 §174]

GAMBLING ADDICTION PROGRAMS

409.430 Gambling addiction programs; advisory committee. (1) The Department of Human Services, in collaboration with county representatives, prior to January 1, 2000, shall develop a plan for the administration of the statewide gambling addiction programs and delivery of program services.

(2) The Department of Human Services may appoint an advisory committee or designate an existing advisory committee to make recommendations to the department concerning:

(a) Performance standards and evaluation methodology;

(b) Fiscal reporting and accountability;

(c) Delivery of services; and

(d) A distribution plan for use of available funds.

(3) The distribution plan for the moneys available in the Problem Gambling Treatment Fund shall be based on performance standards.

(4) The Department of Human Services may enter into an intergovernmental agreement or other contract for the delivery of services related to programs for the prevention and treatment of gambling addiction and other emotional and behavioral problems related to gambling.

(5) Before entering into an agreement or contract under subsection (4) of this section, the Department of Human Services must consider the experience, performance and program capacity of those organizations currently providing services. [1999 c.985 §3]

409.435 Problem Gambling Treatment Fund. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Problem Gambling Treatment Fund. All moneys in the Problem Gambling Treatment Fund are continuously appropriated to the Department of Human Services to be expended for programs for the prevention and treatment of gambling addiction and other emotional and behavioral problems related to gambling and for the administration of the programs.

(2) The Problem Gambling Treatment Fund shall consist of:

(a) The net proceeds from the Oregon State Lottery allocated to the fund under ORS 461.549;

(b) Moneys appropriated to the fund by the Legislative Assembly; and

(c) Interest earnings on moneys in the fund. [1999 c.985 §2]

RESPIRE CARE PROGRAM

409.450 Definitions for ORS 409.450 to 409.478. As used in ORS 409.450 to 409.478:

(1) "Caregiver" means an individual providing ongoing care for an individual with special needs.

(2) "Community lifespan respite care program" means a noncategorical respite care program that:

(a) Is operated by community-based private nonprofit, for-profit or public agencies that provide respite care services;

(b) Receives funding through the Oregon Lifespan Respite Care Program established under ORS 409.458;

(c) Serves an area of one or more counties;

(d) Acts as a single local source of information and referral; and

(e) Facilitates access to local respite care services.

(3) "Noncategorical care" means care without regard to the status, including but not limited to age and type of special need of the individual receiving care.

(4) "Provider" means an individual or agency selected by a family or caregiver to provide respite care to an individual with special needs.

(5) "Respite care" means the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs.

(6) "Respite care services" includes:

(a) Recruiting and screening of paid and unpaid respite care providers;

(b) Identifying local training resources and organizing training opportunities for respite care providers;

(c) Matching of families and caregivers with providers and other types of respite care;

(d) Linking families and caregivers with payment resources;

(e) Identifying, coordinating and developing community resources for respite care;

(f) Quality assurance and evaluation; and

(g) Assisting families and caregivers to identify respite care needs and resources.

(7) "Special needs" includes:

(a) Alzheimer's disease and related disorders;

(b) Developmental disabilities;

(c) Physical disabilities;

(d) Chronic illness;

(e) Mental and emotional conditions that require supervision;

(f) Situations in which a high risk of abuse or neglect exists; and

(g) Such other situations or conditions as the Department of Human Services may establish by rule. [1997 c.745 §1]

409.454 Legislative findings on respite care. The Legislative Assembly finds that:

(1) Supporting the efforts of families and caregivers to care for individuals with special needs at home is efficient, cost effective and humane. Families receiving occasional respite care relief are less likely to request admission of an individual with special needs to nursing homes, foster care or other out-of-home care at public expense.

(2) Respite care reduces family and caregiver stress, enhances family and caregiver coping ability and strengthens family ability to meet the challenging demands of caring for individuals with special needs.

(3) Respite care reduces the risk of abuse and neglect of children, senior citizens and other vulnerable groups.

(4) Coordinated, noncategorical respite care services must be available locally to provide reliable short-term relief when it is needed by families and caregivers regardless of where they live in Oregon. [1997 c.745 §2]

409.458 Oregon Lifespan Respite Care Program established; duties. The Director of Human Services shall establish the Oregon Lifespan Respite Care Program to develop and encourage statewide coordination of respite care and to work with community-based private nonprofit, for-profit or public agencies and interested citizen groups in the establishment of community lifespan respite care programs. The Oregon Lifespan Respite Care Program shall:

(1) Provide policy and program development support, including but not limited to data collection and outcome measures;

(2) Identify and promote resolution of local and state level policy concerns;

(3) Provide technical assistance to community lifespan respite care programs;

(4) Develop and distribute respite care information;

(5) Promote the exchange of information and coordination among state and local government, community lifespan respite care programs, agencies serving individuals with special needs, families and respite care advocates to encourage efficient provision of respite care and reduce duplication of effort;

(6) Ensure statewide access to community lifespan respite care programs; and

(7) Monitor and evaluate implementation of community lifespan respite care programs. [1997 c.745 §3]

409.462 Community programs; criteria; administrator of program; advisory council. (1) The Department of Human Services through the Oregon Lifespan Respite Care Program shall coordinate the establishment of community lifespan respite care programs. The program shall accept proposals to operate community lifespan respite care programs, submitted in the form and manner required by the program, from community-based private nonprofit, for-profit or public agencies that provide respite care services. According to criteria established by the Department of Human Services, the Oregon Lifespan Respite Care Program shall designate and fund agencies described in this section to operate the community respite care programs.

(2) The Director of Human Services shall create the position of administrator of the Oregon Lifespan Respite Care Program to carry out the duties of the program.

(3) The Family Support Advisory Council established in ORS 417.346 shall appoint a subcommittee of the council to act as an advisory council to the Oregon Lifespan Respite Care Program. The subcommittee shall be composed of Family Support Advisory Council members and nonmembers including respite care providers, respite care program managers, respite care consumers, family members and other interested individuals. [1997 c.745 §4]

409.466 Community program duties; advisory committee. Each community lifespan respite care program established pursuant to ORS 409.458 shall:

(1) Involve key local individuals and agencies in the community lifespan respite care program planning process.

(2) Create an advisory committee composed of 15 members to advise the community lifespan respite care program on how the program may best serve the needs of families and caregivers of individuals with special needs. At least eight members of the advisory committee shall be family members and caregivers of individuals with special needs. Other members shall include respite care providers, representatives of local service agencies and other community representatives. Committee membership shall represent senior citizens, individuals with special needs, and families at risk of abuse or neglect. [1997 c.745 §5]

409.470 Description of respite care services. Respite care services made available through the Oregon Lifespan Respite Care Program shall:

(1) Include a flexible array of respite care options responsive to family and caregiver needs and available before families and caregivers are in a crisis situation;

(2) Be sensitive to the unique needs, strengths and multicultural values of an individual, family or caregiver;

(3) Offer the most efficient access to an array of coordinated respite care services that are built on existing community supports and services;

(4) Be driven by community strengths, needs and resources; and

(5) Use a variety of funds and resources, including but not limited to:

(a) Family or caregiver funds;

(b) Private and volunteer resources;

(c) Public funds; and

(d) Exchange of care among families or caregivers. [1997 c.745 §6]

409.474 Rules. The Department of Human Services shall adopt all rules necessary for the operation and administration of the Oregon Lifespan Respite Care Program, including but not limited to:

(1) Establishing criteria, procedures and timelines for designation of the community-based private nonprofit, for-profit or public agencies that will receive funding to provide respite services under community lifespan respite care programs; and

(2) Requiring that community lifespan respite care programs publicize the telephone number and address where families and caregivers may contact the program. [1997 c.745 §7]

409.478 Use of funds appropriated to program. The Oregon Lifespan Respite Care Program may use the funds appropriated to the program for the following purposes:

(1) The purposes established in ORS 409.458 and 409.462;

(2) Costs related to developing provider recruitment and training, information and referral, outreach and other components of the provision of local respite care;

(3) One time only start-up costs related to the establishment of the community lifespan respite care program; and

(4) Minimum administrative costs for maintaining ongoing program operation. [1997 c.745 §9]

PAIN MANAGEMENT COMMISSION

409.500 Pain Management Commission established; duties; staffing. (1) The Pain Management Commission is established within the Department of Human Services. The commission shall:

- (a) Develop a pain management practice program for providers;
- (b) Develop pain management recommendations;
- (c) Develop ways to improve pain management services through research, policy analysis and model projects; and
- (d) Represent the concerns of patients in Oregon on issues of pain management to the Governor and the Legislative Assembly.

(2) The pain management coordinator of the Department of Human Services shall serve as staff to the commission. [2001 c.987 §1]

409.510 Additional duties of commission. The Pain Management Commission shall:

- (1) Develop a pain management education program curriculum and update it biennially;
- (2) Provide health professional regulatory boards and other health boards, committees or task forces with the curriculum; and
- (3) Work with health professional regulatory boards and other health boards, committees or task forces to develop approved pain management education programs as required. [2001 c.987 §3]

409.520 Membership of Pain Management Commission. (1) The Pain Management Commission shall consist of 19 members as follows:

(a) Seventeen members shall be appointed by the Director of Human Services. Prior to making appointments, the director shall request and consider recommendations from individuals and public and private agencies and organizations with experience or a demonstrated interest in pain management issues, including but not limited to:

- (A) Physicians licensed under ORS chapter 677 or organizations representing physicians;
- (B) Nurses licensed under ORS chapter 678 or organizations representing nurses;
- (C) Psychologists licensed under ORS 675.010 to 675.150 or organizations representing psychologists;
- (D) Physician assistants licensed under ORS 677.495 to 677.545 or organizations representing physician assistants;

(E) Chiropractic physicians licensed under ORS chapter 684 or organizations representing chiropractic physicians;

(F) Naturopaths licensed under ORS chapter 685 or organizations representing naturopaths;

(G) Clinical social workers licensed under ORS 675.510 to 675.600 or organizations representing clinical social workers;

(H) Palliative care professionals or organizations representing palliative care professionals;

(I) Mental health professionals or organizations representing mental health professionals;

(J) Health care consumers or organizations representing health care consumers;

(K) Hospitals and health plans or organizations representing hospitals and health plans;

(L) Patients or advocacy groups representing patients; and

(M) Members of the public.

(b) Two members shall be members of a legislative committee with jurisdiction over human services issues, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives. Both members shall be nonvoting, ex officio members of the commission.

(2) The term of office of each member is four years, but a member serves at the pleasure of the appointing authority. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term. [2001 c.987 §2; 2003 c.14 §175]

Note: Section 4, chapter 987, Oregon Laws 2001, provides:

Sec. 4. Notwithstanding the term of office specified by section 2 of this 2001 Act [409.520], of the members first appointed to the Pain Management Commission:

- (1) Five shall serve for a term ending July 1, 2003.
- (2) Five shall serve for a term ending July 1, 2004.
- (3) Five shall serve for a term ending July 1, 2005.
- (4) Four shall serve for a term ending July 1, 2006. [2001 c.987 §4]

409.530 Selection of chairperson and vice chairperson; requirements for commission meetings. (1) The Director of Human Services shall select one member of the Pain Management Commission as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the director determines.

(2) A majority of the voting members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every six months at a place, day and hour determined by the director. The commission also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission. [2001 c.987 §5]

409.540 Pain Management Fund established. There is established the Pain Management Fund in the Department of Human Services Account established under ORS 409.060. All moneys credited to the Pain Management Fund are continuously appropriated for the purposes of ORS 409.500 to 409.570 to be expended by the Pain Management Commission established under ORS 409.500. [2001 c.987 §9]

409.550 Acceptance of contributions. The Pain Management Commission may accept contributions of funds and assistance from the United States Government or its agencies or from any other source, public or private, and agree to conditions thereon not inconsistent with the purposes of the commission. All such funds shall be deposited in the Pain Management Fund established in ORS 409.540 to aid in financing the duties, functions and powers of the commission. [2001 c.987 §6]

409.560 Pain management education required of certain licensed health care professionals; duties of Board of Medical Examiners; rules. (1) A physician assistant licensed under ORS chapter 677, a nurse licensed under ORS chapter 678, a psychologist licensed under ORS 675.010 to 675.150, a chiropractic physician licensed under ORS chapter 684 or a naturopath licensed under ORS chapter 685 must complete one pain management education program established under ORS 409.510.

(2) The Board of Medical Examiners, in consultation with the Pain Management Commission, shall identify by rule physicians licensed under ORS chapter 677 who, on an ongoing basis, treat patients in chronic or terminal pain and who must complete one pain management education program established under ORS 409.510. The board may identify by rule circumstances under which the requirement under this section may be waived. [2001 c.987 §10]

Note: 409.560 becomes operative January 2, 2006. See section 18, chapter 987, Oregon Laws 2001.

Note: 409.560 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 409 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 11 and 18, chapter 987, Oregon Laws 2001, provide:

Sec. 11. A person required to complete one pain management education program established under section 3 of this 2001 Act [409.510] shall complete the program:

(1) Within 24 months of the operative date of this section [January 2, 2006];

(2) Within 24 months of the first renewal of the person's license after the operative date of this section; or

(3) For a physician assistant for whom an application under ORS 677.510 (1) has been approved before the operative date of this section, within 24 months after the operative date of this section. [2001 c.987 §11; 2001 c.987 §11a]

Sec. 18. Sections 10 [409.560], 11 and 11a of this 2001 Act and the amendments to ORS 675.110, 677.228, 677.510, 678.101, 684.092 and 685.102 by sections 12 to 17 of this 2001 Act become operative on January 2, 2006. [2001 c.987 §18]

409.570 Rules. In accordance with applicable provisions of ORS chapter 183, the Pain Management Commission may adopt rules necessary to implement ORS 409.500 to 409.570. [2001 c.987 §8]

WOMEN, INFANTS AND CHILDREN PROGRAM

409.600 Women, Infants and Children Program; rulemaking; civil penalties. (1) The Women, Infants and Children Program is established in the Department of Human Services. The purpose of the program is to serve as an adjunct to health care by providing nutritious food, nutrition education and counseling, health screening and referral services to pregnant and breast-feeding women and to infants and children in certain high-risk categories.

(2) The department shall adopt:

(a) Standards and procedures to guide administration of the program by the state in conformity with federal requirements and to define the rights, responsibilities and legal procedures of program vendors; and

(b) Rules necessary to implement and carry out the provisions of this section.

(3)(a) In addition to any other penalty provided by law, the department may assess a civil penalty against any person for violation of any rule of the department relating to the Women, Infants and Children Program. The department shall adopt by rule criteria for the amount of civil penalties to be assessed under this section.

(b) All penalties recovered under this section shall be deposited into the General Fund of the State Treasury and credited to a subaccount of the Department of Human Services Account designated by the department. Moneys deposited are appropriated continuously to the department and shall be used only for the administration and enforcement of this section. [1999 c.822 §1]

CHILD CARE SERVICES

409.610 Goal of Legislative Assembly.

It is the goal of the Legislative Assembly to provide programs to make child care services more affordable, to improve the quality of services offered and to increase the number of child care providers. Programs should be tailored to the needs of local communities and should include a combination of actions that will address both targeted populations, such as teen parents or disabled children, and low-income working or student parents. [1991 c.697 §1]

HEALTH CARE INTERPRETERS

409.615 Definitions for ORS 409.615 to 409.623. As used in ORS 409.615 to 409.623:

(1) "Health care interpreter" means a person who is readily able to communicate with a person with limited English proficiency and to accurately translate the written or oral statements of the person with limited English proficiency into English, and who is readily able to translate the written or oral statements of other persons into the language of the person with limited English proficiency.

(2) "Health care" means medical, surgical or hospital care or any other remedial care recognized by state law, including mental health care.

(3) "Person with limited English proficiency" means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively with a health care provider. [2001 c.903 §1]

409.617 Legislative findings and policy on health care interpreters. (1) The Legislative Assembly finds that persons with limited English proficiency are often unable to interact effectively with health care providers. Because of language differences, persons with limited English proficiency are often excluded from health care services, experience delays or denials of health care services or receive health care services based on inaccurate or incomplete information.

(2) The Legislative Assembly further finds that the lack of competent health care interpreters among health care providers impedes the free flow of communication between the health care provider and patient, preventing clear and accurate communication and the development of empathy, confidence and mutual trust that is essential for an effective relationship between health care provider and patient.

(3) It is the policy of the Legislative Assembly that health care for persons with

limited English proficiency be provided according to the guidelines established under the policy statement issued August 30, 2000, by the U.S. Department of Health and Human Services, Office for Civil Rights, entitled, "Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency," and the 1978 Patient's Bill of Rights. [2001 c.903 §2]

409.619 Oregon Council on Health Care Interpreters. (1) The Oregon Council on Health Care Interpreters is created in the Department of Human Services. The council shall consist of 25 members appointed as follows:

(a) The Governor shall appoint two members from each of the following groups:

(A) Consumers of medical services who are persons with limited English proficiency and who use health care interpreters;

(B) Educators who either teach interpreters or persons in related educational fields, or who train recent immigrants and persons with limited English proficiency;

(C) Persons with expertise and experience in administration or policymaking related to the development and operation of policies, programs or services related to interpreters, and who have familiarity with the rulings of the federal Office for Civil Rights concerning interpreter services for various institutions;

(D) Health care providers, consisting of one physician and one registered nurse, who utilize interpreter services regularly in their practice;

(E) Representatives of safety net clinics that predominantly serve persons with limited English proficiency; and

(F) Representatives of hospitals, health systems and health plans predominantly serving persons with limited English proficiency.

(b) The Governor shall appoint one representative from each of the following agencies and organizations after consideration of nominations by the executive authority of each:

(A) The Commission on Asian Affairs;

(B) The Commission on Black Affairs;

(C) The Commission on Hispanic Affairs;

(D) The Commission on Indian Services;

(E) The International Refugee Center of Oregon;

(F) The Oregon Judicial Department's Certified Court Interpreter program;

(G) The Commission for Women; and

(H) The Institute for Health Professionals of Portland Community College.

(c) The Director of Human Services shall appoint one member from each of the following:

- (A) The Department of Human Services;
- (B) The Office of Medical Assistance Programs;
- (C) The Mental Health and Developmental Disability Services Division;
- (D) The Senior and Disabled Services Division; and
- (E) The Health Division.

(d) The membership of the council shall be appointed so as to be representative of the racial, ethnic, cultural, social and economic diversity of the people of this state.

(2) The term of a member shall be three years. A member may be reappointed.

(3) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term. The appointing authority may appoint a replacement for any member of the council who misses more than two consecutive meetings of the council. The newly appointed member shall represent the same group as the vacating member.

(4) The council shall select one member as chairperson and one member as vice chairperson, for such terms and with duties and powers as the council determines necessary for the performance of the functions of such offices.

(5) The council may establish such advisory and technical committees as it considers necessary to aid and advise the council in the performance of its functions. The committees may be continuing or temporary committees. The council shall determine the representation, membership, terms and organization of the committees and shall appoint committee members.

(6) A majority of the members of the council shall constitute a quorum for the transaction of business.

(7) Members of the council are not entitled to compensation, but at the discretion of the Director of Human Services may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties, subject to ORS 292.495.

(8) The council may accept contributions of funds and assistance from the United States Government or its agencies or from any other source, public or private, for purposes consistent with the purposes of the council.

(9) The Department of Human Services shall provide the council with such services and employees as the council requires to carry out its duties. [2001 c.903 §3]

409.620 [1991 c.697 §4; repealed by 1993 c.676 §53]

409.621 Testing, qualification and certification standards for health care interpreters. The Oregon Council on Health Care Interpreters shall work in cooperation with the Department of Human Services to:

(1) Develop testing, qualification and certification standards for health care interpreters for persons with limited English proficiency.

(2) Coordinate with other states to develop and implement educational and testing programs for health care interpreters.

(3) Examine operational and funding issues, including but not limited to the feasibility of developing a central registry and annual subscription mechanism for health care interpreters.

(4) Do all other acts as shall be necessary or appropriate under the provisions of ORS 409.615 to 409.623. [2001 c.903 §4]

409.623 Rules on procedures for testing, qualification and certification of health care interpreters. (1) In consultation with the Oregon Council on Health Care Interpreters, the Department of Human Services shall by rule establish procedures for testing, qualification and certification of health care interpreters for persons with limited English proficiency, including but not limited to:

(a) Minimum standards for qualification and certification as a health care interpreter, including:

(A) Oral and written language skills in English and in the language for which health care interpreter qualification or certification is granted; and

(B) Formal education or training in medical terminology, anatomy and physiology, and medical ethics;

(b) Categories of expertise of health care interpreters based on the English and non-English skills and the medical terminology skills of the person seeking qualification or certification;

(c) Procedures for receiving applications and for examining applicants for qualification or certification;

(d) The content and administration of required examinations;

(e) The requirements and procedures for reciprocity of qualification and certification for health care interpreters qualified or certified in another state or territory of the United States; and

(f) Fees for application, examination, initial issuance, renewal and reciprocal acceptance of qualification or certification as a health care interpreter and for other fees deemed necessary by the department.

(2) Any person seeking qualification or certification as a health care interpreter must submit an application to the department. If the applicant meets the requirements for qualification or certification established by the department under this section, the department shall issue an annual certificate of qualification or a certification to the health care interpreter. The department shall collect a fee for the issuance of the certificate of qualification or the certification and for any required examinations in the amount established pursuant to subsection (1) of this section.

(3) The department shall work with other states to develop educational and testing programs and procedures for the qualification and certification of health care interpreters.

(4) In addition to the requirements for qualification established under subsection (1) of this section, a person may be qualified as a health care interpreter only if the person:

(a) Is able to fluently interpret or translate the dialect, slang or specialized vocabulary of the non-English language for which qualification is sought;

(b) Has had at least 60 hours of health care interpreter training that includes anatomy and physiology and concepts of medical interpretation; and

(c) Has had practical experience as an intern with a practicing health care interpreter.

(5) A person may not use the title of "qualified health care interpreter" unless the person has met the requirements for qualification established under subsections (1) and (4) of this section and has been issued a valid certificate of qualification by the department.

(6) In addition to the requirements for certification established under subsection (1) of this section, a person may be certified as a health care interpreter only if:

(a) The person has met all the requirements established under subsection (4) of this section; and

(b) The person has passed written and oral examinations required by the department in English, in the non-English language the person wishes to translate and in medical terminology.

(7) A person may not use the title of "certified health care interpreter" unless the person has met the requirements for certi-

fication established under subsections (1) and (6) of this section and has been issued a valid certification by the department. [2001 c.903 §5]

409.625 Moneys received credited to Department of Human Services Account.

All moneys received by the Oregon Council on Health Care Interpreters under ORS 409.615 to 409.625 shall be paid into the General Fund in the State Treasury and placed to the credit of the Department of Human Services Account. Such moneys are appropriated continuously to the department and shall be used only for the administration and enforcement of the provisions of ORS 409.615 to 409.625. [2001 c.903 §7]

409.630 [1991 c.697 §6; repealed by 1993 c.676 §53]

JOB REFERRALS

409.710 Certain job referrals prohibited; eligibility not conditioned on employment at workplace involved in labor dispute.

(1) The Department of Human Services may not refer any individual on a job referral that would aid in the filling of a job opening that exists because of a labor dispute.

(2) Notwithstanding any other provision of law, neither the department nor any other state agency may require as a condition of eligibility to receive benefits or services provided by the department or agency that an individual apply for or accept employment at any workplace where there is a labor dispute in progress.

(3) As used in this section, "labor dispute" has the meaning given that term in ORS 662.010. [Formerly 184.883; 2001 c.900 §74; 2003 c.14 §176]

MISCELLANEOUS

409.745 Physician Visa Waiver Program; rules.

(1) The Physician Visa Waiver Program is established in the Department of Human Services. The purpose of the program is to make recommendations to the United States Department of State for a waiver of the foreign country residency requirement on behalf of foreign physicians holding visas who seek employment in federally designated shortage areas.

(2) A foreign physician who has completed a residency in the United States may apply to the Department of Human Services for a recommendation for a waiver of the foreign country residency requirement in order to obtain employment in a federally designated shortage area in the state. Applications shall be on the forms of and contain the information requested by the department. Each application shall be accompanied by the application fee.

(3) The department reserves the right to recommend or decline to recommend any request for a waiver.

(4) The department shall adopt rules necessary to implement and administer the program, including but not limited to adopting an application fee not to exceed the cost of administering the program. [2003 c.608 §1]

409.750 State goal to eliminate or alleviate poverty. The State of Oregon desires to assist and enable the poor to achieve maximum feasible economic self-sufficiency. It shall be a state goal to eliminate or alleviate the causes and conditions of poverty in Oregon. The state shall assist community action agencies to stimulate a better focusing of all available local, state, federal and private resources upon the goal. [Formerly 184.801]

Note: Sections 1 to 63, chapter 736, Oregon Laws 2003, provide:

HOSPITAL TAXES

Sec. 1. As used in sections 1 to 9 of this 2003 Act:

(1) "Charity care" means costs for providing inpatient or outpatient care services free of charge or at a reduced charge because of the indigence or lack of health insurance of the patient receiving the care services.

(2) "Contractual adjustments" means the difference between the amounts charged based on the hospital's full established charges and the amount received or due from the payor.

(3) "Hospital" has the meaning given that term in ORS 442.015 but does not include special inpatient care facilities.

(4) "Net revenue":

(a) Means the total amount of charges for inpatient or outpatient care provided by the hospital to patients, less charity care, bad debts and contractual adjustments;

(b) Does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to interest and guest meals; and

(c) Does not include any revenue that is taken into account in computing a long term care facility assessment under sections 15 to 22 of this 2003 Act.

(5) "Waivered hospital" means a type A or type B hospital, as described in ORS 442.470, a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4 of this 2003 Act. [2003 c.736 §1]

Sec. 2. (1) An assessment is imposed on each hospital in this state that is not a waivered hospital. The assessment shall be imposed at a rate determined by the Director of Human Services by rule that is the director's best estimate of the rate needed to fund the services and costs identified in section 9 of this 2003 Act. The rate of assessment shall be imposed on the net revenue of each hospital subject to assessment. The director shall consult with representatives of hospitals before setting the assessment.

(2) Notwithstanding subsection (1) of this section, the rate of assessment may not exceed three percent.

(3) The assessment shall be reported on a form prescribed by the Department of Human Services and shall contain the information required to be reported by the department. The assessment form shall be filed with the department on or before the 75th day following the end of the calendar quarter for which the assess-

ment is being reported. The hospital shall pay the assessment at the time the hospital files the assessment report. The payment shall accompany the report.

(4) A hospital is not guaranteed that any additional moneys paid to the hospital in the form of payments for services shall equal or exceed the amount of the assessment paid by the hospital.

(5) Hospitals operated by the United States Department of Veterans Affairs and pediatric specialty hospitals providing care to children at no charge are exempt from the assessment imposed under this section. [2003 c.736 §2]

Sec. 3. Notwithstanding section 2 of this 2003 Act, the Director of Human Services shall reduce the rate of assessment imposed under section 2 of this 2003 Act to the maximum rate allowed under federal law if the reduction is required to comply with federal law. [2003 c.736 §3]

Sec. 4. (1) On or before January 1, 2004, the Department of Human Services shall submit an application to the Centers for Medicare and Medicaid Services to request a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) to exempt waivered facilities from the assessment imposed under section 2 of this 2003 Act. The department shall ensure that the application requesting a waiver meets the requirements of 42 C.F.R. 433.68(e)(1).

(2) The Director of Human Services may include in the application requesting a waiver any hospital operated exclusively for a prepaid group practice health plan that serves at least 200,000 members in this state and that has been issued a certificate of authority by the Department of Consumer and Business Services as a health care service contractor if the application requesting a waiver meets the requirements of 42 C.F.R. 433.68(e)(1).

(3) The department shall notify waivered facilities that the department has submitted the application to the Centers for Medicare and Medicaid Services to request a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) to exempt waivered facilities from the assessment imposed under section 2 of this 2003 Act.

(4) If an application to the Centers for Medicare and Medicaid Services for a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) is denied, the Director of Human Services may resubmit the application with appropriate changes to receive a waiver of the broad-based tax requirement. [2003 c.736 §4]

Sec. 5. (1) A hospital that fails to file a report or pay an assessment under section 2 of this 2003 Act by the date the report or payment is due shall be subject to a penalty of \$500 per day of delinquency. The total amount of penalties imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalties are being imposed.

(2) Penalties imposed under this section shall be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(3) Penalties paid under this section are in addition to and not in lieu of the assessment imposed under section 2 of this 2003 Act. [2003 c.736 §5]

Sec. 6. (1) Any hospital that has paid an amount that is not required under sections 1 to 9 of this 2003 Act may file a claim for refund with the Department of Human Services.

(2) Any hospital that is aggrieved by an action of the Department of Human Services or by an action of the Director of Human Services taken pursuant to subsection (1) of this section shall be entitled to notice and an opportunity for a contested case hearing under ORS chapter 183. [2003 c.736 §6]

Sec. 7. The Department of Human Services may audit the records of any hospital in this state to determine compliance with sections 1 to 9 of this 2003 Act. The department may audit records at any time for a period of five years following the date an assessment is due to be reported and paid under section 2 of this 2003 Act. [2003 c.736 §7]

Sec. 8. Amounts collected by the Department of Human Services from the assessments imposed under section 2 of this 2003 Act shall be deposited in a suspense account established under ORS 293.445. Amounts necessary to pay refunds are continuously appropriated to the department from the suspense account. After the payment of refunds, the net amount of revenue shall be transferred to the Hospital Quality Assurance Fund established under section 9 of this 2003 Act. [2003 c.736 §8]

Sec. 9. (1) The Hospital Quality Assurance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Hospital Quality Assurance Fund shall be credited to the Hospital Quality Assurance Fund.

(2) Amounts in the Hospital Quality Assurance Fund are continuously appropriated to the Department of Human Services for the purpose of funding health services under ORS 414.705 to 414.750, including but not limited to:

(a) Increasing reimbursement rates for inpatient and outpatient hospital services under ORS 414.705 to 414.750;

(b) Expanding, continuing or modifying hospital services for persons 19 years of age or older with incomes below 100 percent of the federal poverty guidelines who do not have federal Medicare coverage under ORS 414.705 to 414.750; and

(c) Administrative costs incurred by the department to administer the assessments imposed under section 2 of this 2003 Act. [2003 c.736 §9]

Sec. 10. Sections 1 to 9 of this 2003 Act apply to net revenues earned by hospitals on or after January 1, 2004, and before January 1, 2008. [2003 c.736 §10]

Sec. 11. (1) Sections 1 to 9 of this 2003 Act become operative on the day after the date of receipt of all necessary federal approvals, including the waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e), by the Centers for Medicare and Medicaid Services.

(2) The Director of Human Services shall notify the Legislative Counsel upon receipt of the necessary federal approvals or denial of the federal approvals. [2003 c.736 §11]

Sec. 12. Sections 1 to 9 of this 2003 Act are repealed on January 2, 2010. [2003 c.736 §12]

Sec. 13. Nothing in the repeal of sections 1 to 9 of this 2003 Act by section 12 of this 2003 Act affects the imposition and collection of a hospital assessment under sections 1 to 9 of this 2003 Act for a calendar quarter beginning before January 1, 2008. [2003 c.736 §13]

Sec. 14. Any moneys remaining in the Hospital Quality Assurance Fund on December 31, 2009, are transferred to the General Fund. [2003 c.736 §14]

LONG TERM CARE FACILITY TAXES

Sec. 15. As used in sections 15 to 22 of this 2003 Act:

(1) "Assessment rate" means the rate established by the Director of Human Services under section 17 of this 2003 Act.

(2) "Gross revenue":

(a) Means the revenue paid to a long term care facility for patient care, room, board and services, less contractual adjustments; and

(b) Does not include revenue derived from sources other than operations, including but not limited to interest and guest meals.

(3) "Long term care facility" has the meaning given that term in ORS 442.015, but does not include an intermediate care facility for the mentally retarded.

(4) "Patient days" means the total number of patients occupying beds in a long term care facility, determined as of 12:01 a.m. of each day, for all days in the calendar period for which an assessment is being reported and paid. For purposes of this subsection, if a long term care facility patient is admitted and discharged on the same day, the patient shall be deemed present on 12:01 a.m. of that day. [2003 c.736 §15]

Sec. 16. (1) A long term care facility assessment is imposed on each long term care facility in this state.

(2) The amount of the assessment equals the assessment rate times the number of patient days at the long term care facility for a calendar quarter.

(3) The assessment shall be reported on a form prescribed by the Department of Human Services and shall contain the information required to be reported by the department. The assessment form shall be filed with the department on or before the 30th day of the month following the end of the calendar quarter for which the assessment is being reported. The long term care facility shall pay the assessment at the time the facility files the assessment report. The payment shall accompany the report.

(4) A long term care facility is not guaranteed that any additional moneys paid to the facility in the form of reimbursements calculated according to the methodology described in section 24 (4) of this 2003 Act shall equal or exceed the amount of the long term care facility assessment paid by the facility. [2003 c.736 §16]

Sec. 17. (1) The Director of Human Services shall establish an annual assessment rate for long term care facilities that applies for a 12-month period beginning July 1. The assessment rate shall be a rate that will raise an amount equal to six percent of the annual gross revenue of all long term care facilities in this state, excluding the annual gross revenue of long term care facilities that are exempt from the assessment under section 16 of this 2003 Act, for the 12-month period beginning July 1 preceding the 12-month period for which the assessment is being imposed.

(2) At the time the annual assessment rate is established, the director may adjust the assessment rate determined under subsection (1) of this section to account for overages and underages in the aggregate amount actually collected during previous assessment periods.

(3) The director shall establish the assessment rate on or before June 15th preceding the 12-month period for which the rate applies. [2003 c.736 §17]

Sec. 18. The Oregon Veterans' Home is exempt from the assessment imposed under section 16 of this 2003 Act. [2003 c.736 §18]

Note: The amendments to section 18, chapter 736, Oregon Laws 2003, by section 34, chapter 736, Oregon Laws 2003, become operative the day after the date of receipt of approval of the necessary waivers from the Centers for Medicare and Medicaid Services. See section 35, chapter 736, Oregon Laws 2003. Section 18, chapter 736, Oregon Laws 2003, as amended by section 34, chapter 736, Oregon Laws 2003, is set forth for the user's convenience.

Sec. 18. (1) The Oregon Veterans' Home is exempt from the assessment imposed under section 16 of this 2003 Act.

(2) A waived long term care facility, as defined in section 33 of this 2003 Act, is exempt from the long term care facility assessment imposed under section 16 of this 2003 Act.

Sec. 19. (1) A long term care facility that fails to file a report or pay an assessment under section 16 of this 2003 Act by the date the report or payment is due shall be subject to a penalty of \$500 per day of delinquency. The total amount of penalties imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalties are being imposed.

(2) Penalties imposed under this section shall be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(3) Penalties paid under this section are in addition to and not in lieu of the assessment imposed under section 16 of this 2003 Act. [2003 c.736 §19]

Sec. 20. (1) A long term care facility that has paid an amount that is not required under sections 15 to 22 of this 2003 Act may file a claim for refund with the Department of Human Services.

(2) Any long term care facility aggrieved by an action of the Department of Human Services or by an action of the Director of Human Services taken under sections 15 to 22 of this 2003 Act shall be entitled to notice and an opportunity for a contested case hearing under ORS chapter 183. [2003 c.736 §20]

Sec. 21. (1) Each long term care facility subject to assessment under section 16 of this 2003 Act shall maintain records sufficient to determine the amount of the assessment under section 16 of this 2003 Act.

(2) Unless otherwise exempt, a long term care facility shall report the payment of the assessment as an allowable cost for Medicaid reimbursement purposes.

(3) The Department of Human Services may audit the records of any long term care facility in this state to determine compliance with sections 15 to 22 of this 2003 Act. The department may audit records at any time for a period of three years following the date an assessment is due to be reported and paid under section 16 of this 2003 Act. [2003 c.736 §21]

Sec. 22. Amounts collected by the Department of Human Services from the assessment under section 16 of this 2003 Act shall be deposited in a suspense account established under ORS 293.445. Amounts necessary to pay refunds are continuously appropriated to the department from the suspense account. After the payment of refunds, the net amount of revenue shall be transferred to the Long Term Care Facility Quality Assurance Fund established under section 24 of this 2003 Act. [2003 c.736 §22]

Sec. 23. Sections 15 to 22 of this 2003 Act apply to long term care facility assessments imposed in calendar quarters beginning on or after the effective date of this 2003 Act [November 26, 2003] and before July 1, 2007. [2003 c.736 §23]

Sec. 24. (1) The Long Term Care Facility Quality Assurance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Long Term Care Facility Quality Assurance Fund shall be credited to the fund.

(2) Amounts in the Long Term Care Facility Quality Assurance Fund are continuously appropriated to the Department of Human Services for the purposes of funding long term care facilities, as defined in section 15 of this 2003 Act, that are a part of the Oregon Medicaid reimbursement system.

(3) Funds in the Long Term Care Facility Quality Assurance Fund and the matching federal financial participation under Title XIX of the Social Security Act may be used to fund Medicaid-certified long term care facilities using only the reimbursement methodology described in subsection (4) of this section to achieve a rate of reimbursement greater than the rate in effect on July 1, 2003.

(4) The reimbursement methodology used to make additional payments to Medicaid-certified long term care facilities includes but is not limited to:

(a) Rebasing biennially, beginning on July 1 of each odd-numbered year;

(b) Adjusting for inflation in the nonrebasing year;

(c) Continuing the use of the pediatric rate;

(d) Continuing the use of the complex medical needs additional payment;

(e) Discontinuing the use of the relationship percentage, except when calculating the pediatric rate in paragraph (c) of this subsection; and

(f) Requiring the Department of Human Services to reimburse costs at a rate not lower than the 63rd percentile ceiling of allowable costs for the 2003-2005 biennium and the 70th percentile ceiling of allowable costs for the 2005-2007 biennium. [2003 c.736 §24]

Sec. 25. Notwithstanding section 24 of this 2003 Act:

(1) On or before March 15, 2004, \$6.25 million shall be transferred from the Long Term Care Facility Quality Assurance Fund to the General Fund; and

(2) On or before March 15, 2005, \$6.25 million shall be transferred from the Long Term Care Facility Quality Assurance Fund to the General Fund. [2003 c.736 §25]

Sec. 26. Notwithstanding ORS 410.555, during the 2003-2005 biennium and the 2005-2007 biennium, the Department of Human Services shall periodically adjust reimbursement rates to reflect the increase between the long term care facility caseload approved and funded in the legislatively adopted budget for the department for the 2003-2005 biennium and the long term care facility caseload at the time of the adjustment. [2003 c.736 §26]

Sec. 27. (1) Notwithstanding section 17 (1) of this 2003 Act and ORS 410.555, the assessment under section 16 of this 2003 Act for calendar quarters beginning on or after the effective date of this 2003 Act [November 26, 2003] and before July 1, 2004, shall be determined using an assessment rate of \$8.25.

(2) An assessment in a calendar quarter may be adjusted as provided in section 17 (2) of this 2003 Act to take into account overages or underages raised under the assessment rate set under subsection (1) of this section, including but not limited to overages and underages caused by an approval or denial by the Centers for Medicare and Medicaid Services of an application to request a waiver made pursuant to section 33 of this 2003 Act. An adjustment under this subsection may be made at any time. [2003 c.736 §27]

Sec. 28. (1) Notwithstanding section 23 of this 2003 Act and ORS 410.555, a long term care facility assessment is imposed on long term care facilities for patient days on or after July 1, 2003, and before the first day of the calendar quarter that begins on or after the effective date of this 2003 Act [November 26, 2003].

(2) The assessment rate for the period described in subsection (1) of this section is \$8.25.

(3) The assessment shall be computed and reported as described in section 16 of this 2003 Act and shall be paid to the Department of Human Services on or before the 30th day of the first month of the calendar quarter that begins on or after the effective date of this 2003 Act.

(4) The department shall deposit assessments collected under this section, and penalties associated with those assessments, in the suspense account described in section 22 of this 2003 Act.

(5) Unless the context requires otherwise, sections 15 to 22 of this 2003 Act apply to the assessments imposed under this section. [2003 c.736 §28]

Sec. 29. Notwithstanding sections 15 to 22 of this 2003 Act, an assessment under sections 15 to 22 of this 2003 Act may be imposed only in a calendar quarter for which the long term care facility reimbursement rate that is part of the Oregon Medicaid reimbursement system was calculated according to the methodology described in section 24 (4) of this 2003 Act. The department may make retroactive increases in payments for the first six months the assessment is imposed. [2003 c.736 §29]

Sec. 30. Notwithstanding ORS 410.555 and section 28 of this 2003 Act, an assessment under section 28 of this 2003 Act may be imposed only in a calendar quarter for which the long term care facility reimbursement rate that is part of the Oregon Medicaid reimbursement system was calculated according to the methodology described in section 24 (4) of this 2003 Act. [2003 c.736 §30]

Sec. 31. Sections 15 to 22 and 24 of this 2003 Act are repealed on January 2, 2008. [2003 c.736 §31]

Sec. 32. (1) Nothing in the repeal of sections 15 to 22 and 24 of this 2003 Act by section 31 of this 2003 Act affects the imposition and collection of a long term care facility assessment under sections 15 to 22 of this 2003 Act for a calendar quarter beginning before July 1, 2007.

(2) Any moneys remaining in the Long Term Care Facility Quality Assurance Fund on January 1, 2008, are transferred to the General Fund. [2003 c.736 §32]

Sec. 33. (1) As used in this section, "waivered long term care facilities" means continuing care retirement communities, as defined in ORS 101.020, long term care facilities that have been identified by the Department of Human Services as having a Medicaid recipient census that exceeds the census level established by the department and the Oregon Veterans' Home.

(2) On or before the effective date of this 2003 Act [November 26, 2003], the department shall submit an application to the Centers for Medicare and Medicaid Services to request a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) to exempt waived long term care facilities from the long term care facility assessment imposed under section 16 of this 2003 Act. The department shall ensure that the application requesting a waiver meets the requirements of 42 C.F.R. 433.68(e)(1).

(3) The department shall notify waived long term care facilities that the department has submitted the application to the Centers for Medicare and Medicaid Services to request a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) to exempt waived long term care facilities from the long term care facility assessment imposed under section 16 of this 2003 Act. While a decision on an application to request a waiver is pending, the department may extend the period in which a waived long term care facility is required to file a return and pay a long term care facility assessment. The period of extension may not continue beyond a date that is 90 days following the date of the denial of a waiver by the Centers for Medicare and Medicaid Services.

(4) If an application to the Centers for Medicare and Medicaid Services for a waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e) is denied, the Director of Human Services may:

(a) Resubmit the application with appropriate changes to receive a waiver of the broad-based tax requirements; or

(b) Submit an application to the Centers for Medicare and Medicaid Services for a waiver of uniform tax requirements pursuant to 42 C.F.R. 433.68(e). [2003 c.736 §33]

Sec. 35. (1) The amendments to section 18 of this 2003 Act by section 34 of this 2003 Act become operative on the day after the date of receipt of the approval by the Centers for Medicare and Medicaid Services of the waiver of the broad-based tax requirement pursuant to 42 C.F.R. 433.68(e).

(2) The Director of Human Services shall notify the Legislative Counsel upon receipt of the waiver or denial of the waiver request. [2003 c.736 §35]

Sec. 36. Section 33 of this 2003 Act is repealed on January 2, 2008. [2003 c.736 §36]

MEDICAID MANAGED CARE TAXES

Sec. 37. As used in sections 37 to 44 of this 2003 Act:

(1) "Managed care premiums" means premium payments paid to a prepaid managed care health services organization, but does not include Medicare premiums.

(2) "Prepaid managed care health services organization" or "organization" means a managed health, dental, mental health or chemical dependency organization that contracts with the Department of Human Services on a prepaid capitated basis under ORS 414.725. A prepaid managed care health services organization may be a dental care organization, fully capitated health plan, physician care organization, mental health organization or chemical dependency organization. [2003 c.736 §37]

Sec. 38. (1) An assessment is imposed on each prepaid managed care health services organization in this state. The assessment shall be imposed at a rate set by the Director of Human Services. The rate may not exceed six percent of managed care premiums paid to an organization.

(2) The assessment shall be reported on a form prescribed by the Department of Human Services and shall contain the information required to be reported by the department. The assessment form shall be filed with the department on or before the 75th day following the end of the calendar quarter for which the assessment is being reported. The organization shall pay the assessment at the time the organization files the assessment report. The payment shall accompany the report.

(3) A prepaid managed care health services organization is not guaranteed that any additional moneys paid to the organization shall equal or exceed the amount of the assessment paid by the organization. [2003 c.736 §38]

Sec. 39. Notwithstanding section 38 of this 2003 Act, the Director of Human Services may reduce the rate of assessment imposed under section 38 of this 2003 Act to the maximum rate allowed under federal law if the reduction is required to comply with federal law. [2003 c.736 §39]

Sec. 40. (1) A prepaid managed care health services organization that fails to file a report or pay an assessment under section 38 of this 2003 Act by the date the report or payment is due shall be subject to a penalty of \$500 per day of delinquency. The total amount of penalties imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalties are being imposed.

(2) Penalties imposed under this section shall be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(3) Penalties paid under this section are in addition to and not in lieu of the assessment imposed under section 38 of this 2003 Act. [2003 c.736 §40]

Sec. 41. (1) A prepaid managed care health services organization that has paid an amount that is not required under sections 37 to 44 of this 2003 Act may file a claim for refund with the Department of Human Services.

(2) Any organization that is aggrieved by an action of the Department of Human Services or by an action of the Director of Human Services taken pursuant to subsection (1) of this section shall be entitled to notice

and an opportunity for a contested case hearing under ORS chapter 183. [2003 c.736 §41]

Sec. 42. The Department of Human Services may audit the records of any organization in this state to determine compliance with sections 37 to 44 of this 2003 Act. The department may audit the records at any time for a period of five years following the date an assessment is due to be reported and paid under section 38 of this 2003 Act. [2003 c.736 §42]

Sec. 43. Amounts collected by the Department of Human Services from the assessments under section 38 of this 2003 Act shall be deposited in a suspense account established under ORS 293.445. Amounts necessary to pay refunds are continuously appropriated to the department from the suspense account. After the payment of refunds, the net amount of revenue shall be transferred to the Medical Care Quality Assurance Fund established under section 44 of this 2003 Act. [2003 c.736 §43]

Sec. 44. (1) The Medical Care Quality Assurance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Medical Care Quality Assurance Fund shall be credited to the Medical Care Quality Assurance Fund.

(2) Amounts in the Medical Care Quality Assurance Fund are continuously appropriated to the Department of Human Services for the purpose of funding the state medical assistance program, including but not limited to health services provided by prepaid managed care health services organizations. [2003 c.736 §44]

Sec. 45. Sections 37 to 44 of this 2003 Act apply to managed care premiums received by prepaid managed care health services organizations on or after January 1, 2004, and before January 1, 2008. [2003 c.736 §45]

Sec. 46. (1) Section 38 of this 2003 Act becomes operative on the day after the date of receipt of all necessary federal approvals by the Centers for Medicare and Medicaid Services.

(2) The Director of Human Services shall notify the Legislative Counsel upon receipt of the necessary federal approvals or denial of the federal approvals. [2003 c.736 §46]

Sec. 48. Notwithstanding section 38 of this 2003 Act, an assessment under section 38 of this 2003 Act need not be reported and paid until 75 days after the date section 38 of this 2003 Act becomes operative under section 46 of this 2003 Act or the date on which an assessment report and payment is due under section 38 of this 2003 Act, whichever is later. [2003 c.736 §48]

Sec. 49. Sections 37 to 44 of this 2003 Act are repealed on January 2, 2010. [2003 c.736 §49]

Sec. 50. Nothing in the repeal of sections 37 to 44 of this 2003 Act by section 49 of this 2003 Act affects the imposition and collection of a prepaid managed care health services organization assessment under sections 37 to 44 of this 2003 Act for a calendar quarter beginning before January 1, 2008. [2003 c.736 §50]

Sec. 51. Any moneys remaining in the Medical Care Quality Assurance Fund on December 31, 2009, are transferred to the General Fund. [2003 c.736 §51]

TAXES ON PROGRAMS OF ALL-INCLUSIVE CARE FOR ELDERLY PERSONS

Sec. 52. As used in sections 52 to 59 of this 2003 Act, "program of all-inclusive care for elderly persons" or "program" means a program offering long term care services and medical, dental, mental health and social services to persons 55 years of age and older on a capitated basis that features a comprehensive service delivery system and integrated Medicare and Medicaid financing. [2003 c.736 §52]

Sec. 53. (1) An assessment is imposed on each program of all-inclusive care for elderly persons in this state. The assessment shall equal five percent of the

total capitation rate paid by the Department of Human Services under a program contract.

(2) The assessment shall be reported on a form prescribed by the Department of Human Services and shall contain the information required to be reported by the department. The assessment form shall be filed with the department on or before the 75th day following the end of the calendar quarter for which the assessment is being reported. The program provider shall pay the assessment at the time the provider files the assessment report. The payment shall accompany the report. [2003 c.736 §53]

Sec. 54. Notwithstanding section 53 of this 2003 Act, the Director of Human Services may reduce the rate of assessment imposed under section 53 of this 2003 Act to the maximum rate allowed under federal law if the reduction is required to comply with federal law. [2003 c.736 §54]

Sec. 55. (1) A provider of a program of all-inclusive care for elderly persons that fails to file a report or pay an assessment under section 53 of this 2003 Act by the date the report or payment is due shall be subject to a penalty of \$500 per day of delinquency. The total amount of penalties imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalties are being imposed.

(2) Penalties imposed under this section shall be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060. [2003 c.736 §55]

Sec. 56. (1) A provider of a program of all-inclusive care for elderly persons that has paid an amount that is not required under sections 52 to 59 of this 2003 Act may file a claim for refund with the Department of Human Services.

(2) Any provider of a program that is aggrieved by an action of the Department of Human Services or by an action of the Director of Human Services taken under sections 52 to 59 of this 2003 Act shall be entitled to notice and an opportunity for a contested case hearing under ORS chapter 183. [2003 c.736 §56]

Sec. 57. (1) Unless otherwise exempt, a provider of a program of all-inclusive care for elderly persons shall report the payment of the assessment as an allowable cost for Medicaid reimbursement purposes.

(2) The Department of Human Services may audit the records of any program of all-inclusive care for elderly persons in this state to determine compliance with sections 52 to 59 of this 2003 Act. The department may audit records at any time for a period of five years following the date an assessment is due to be reported and paid under section 53 of this 2003 Act. [2003 c.736 §57]

Sec. 58. Amounts collected by the Department of Human Services from the assessment under section 53 of this 2003 Act shall be deposited in a suspense account established under ORS 293.445. Amounts necessary to pay refunds are continuously appropriated to the department from the suspense account. After the payment of refunds, the net amount of revenue shall be transferred to the PACE Quality Assurance Fund established under section 62 of this 2003 Act. [2003 c.736 §58]

Sec. 59. Sections 52 to 59 of this 2003 Act apply to capitation rates paid for programs of all-inclusive care for elderly persons for calendar months beginning on or after the effective date of this 2003 Act [November 26, 2003] and before July 1, 2007. [2003 c.736 §59]

Sec. 60. Sections 52 to 59 of this 2003 Act are repealed on January 2, 2008. [2003 c.736 §60]

Sec. 61. Nothing in the repeal of sections 52 to 59 of this 2003 Act by section 60 of this 2003 Act affects the imposition and collection of a program of all-inclusive care for elderly persons assessment under sections 52 to

59 of this 2003 Act for a calendar month beginning before July 1, 2007. [2003 c.736 §61]

Sec. 62. (1) The PACE Quality Assurance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the PACE Quality Assurance Fund shall be credited to the PACE Quality Assurance Fund.

(2) Amounts in the PACE Quality Assurance Fund are continuously appropriated to the Department of Human Services for the purpose of funding programs of all-inclusive care for elderly persons, as defined in section 52 of this 2003 Act, that are a part of the Oregon Medicaid reimbursement system. [2003 c.736 §62]

Sec. 62a. Any moneys remaining in the PACE Quality Assurance Fund on December 31, 2009, are transferred to the General Fund. [2003 c.736 §62a]

Sec. 63. (1) Section 53 of this 2003 Act becomes operative on the day after the date of receipt of all necessary federal approvals by the Centers for Medicare and Medicaid Services.

(2) The Director of Human Services shall notify the Legislative Counsel upon receipt of the necessary federal approvals or denial of the federal approvals. [2003 c.736 §63]
